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**November 15, 1996**

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**Via Hand-Delivery**

**Mr. William F. Caton**  
**Secretary**  
**Federal Communications Commission**  
1919 M Street, NW, Room 222  
Washington, DC 20554

**Federal Communications Commission**  
**Office of Secretary**

**Re: Implementation of Section 301(d) of the Telecommunications Act  
of 1996; Reply Comments of the Small Cable Business Association;  
CS Docket No. 95-178**

**Dear Mr. Caton:**

We enclose for filing an original and six copies of the Reply Comments of the Small Cable Business Association in the above-referenced matter.

If you have any questions, please call.

**Very truly yours,**

**Howard & Howard**



**Eric E. Breisach**

EEB:ern

Enclosures

cc: Nancy Stevenson

David Kinley

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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*Federal Communications Commission  
Office of Secretary*

In the Matter of )  
)  
Definition of Markets for Purposes of the )  
Cable Television Mandatory Television )  
Broadcast Signal Carriage Rules )  
)  
Implementation of Section 301(d) of the )  
Telecommunications Act of 1996 )

CS Docket No. 95-178

**REPLY COMMENTS OF THE  
SMALL CABLE BUSINESS ASSOCIATION**

**Christopher C. Cinnamon  
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**Attorneys for the  
Small Cable Business Association**

Dated: November 15, 1996

The Small Cable Business Association ("SCBA") files these Reply Comments to the Comments of The Post Company ("Post") to the *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Recd 6201 (released May 24, 1996) ("Post Comments"). The Post Comments advocate special provisions (the "Post Proposal") designed to protect "smaller" broadcast stations from the adverse impact of market redefinition. The Post Comments suggest an unworkable exception to market-based must-carry that would impose substantial burdens and costs on small cable operators.

**A. The Post Proposal.**

Post suggests that a clause be added to § 76.55(e) of the Commission's rules which "would permit a station to retain must-carry status on those systems for which the station previously was required to install equipment to ensure reception at the headend."<sup>1</sup> Post offers no backup data to support this exception to market-based must-carry. Post merely declares that, "in many instances," stations incur "great expense" to ensure a good quality signal, with no further quantification. While couched in terms of protecting "small broadcast stations," Post's proposal would actually result in substantially broadened out-of-market must-carry rights with no public interest served.

**B. The Post Proposal Deficiencies.**

Post seeks a blanket, perpetual exemption, with no limiting criteria. The Post Proposal suffers from many deficiencies.

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<sup>1</sup> Post Comments, p 3.

**1. The Post Proposal Imposes Disparate Administrative Burdens and Costs on Small Cable.**

The Post Proposal requires that cable operators retain current stations entitled to Post-type relief, as well as add new DMA stations. In its effort to shield broadcasters from any potential loss of investment, the Post Proposal places additional burdens upon cable operators. These burdens are particularly acute for small cable operators. In its Comments,<sup>2</sup> SCBA provides concrete examples of the impact of market redefinition on small cable and detailed cost analyses. The Post Proposal exacerbates those problems.

Fringe reception areas between contiguous markets will require the greatest investment in signal delivery equipment by broadcasters. These fringe areas tend to be more rural and are typically served by small cable systems. Consequently, the burden of the Post Proposal will fall squarely on the shoulders of small cable. This disparate impact must be viewed in conjunction with the probable impact of market redefinition on small cable. Over half of the 211 DMAs will change at least one county from ADI defined markets.<sup>3</sup> Nearly all of the changes will occur in fringe areas between contiguous markets, areas most often served by small cable. Under the current Post Proposal, not only will small cable be saddled with a disproportionate share of the burdens and costs of market redefinition, but small cable will also bear the brunt of the Post Proposal.

**2. No Cost Recovery Analysis.**

Post is concerned that smaller stations will lose capital investments by virtue of market redefinition. Post's Proposal fails to recognize that many broadcasters have likely already recovered any up-front investment within the next three years.

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<sup>2</sup> Comments of the Small Cable Business Association filed October 31, 1996.

<sup>3</sup> *Market Definition Order*, ¶ 18.

**3. No Minimum Level of Subscriber Investment.**

Post seeks exemption for stations that previously elected to install equipment to ensure reception at the headend. Under the Post Proposal, even a nominal investment qualifies for the exception. For example, a broadcaster could spend a few hundred dollars for a hi-gain antenna and effectively buy a slot on a cable system in perpetuity.

**4. No Definition of "Smaller Station."**

Post is concerned that market redefinition will negatively affect "smaller stations." Nevertheless, the Post Proposal would apply to all, even large, broadcast stations.

**5. The Post Proposal Ignores Market Modification Procedures.**

The concerns raised by Post can be adequately addressed by use of market modification procedures. The Commission already is promulgating rules for an accelerated procedure. Special cases such as those referenced by Post can be adequately and efficiently handled through the market modification process. Post's solution is to create a blanket exception which will operate to increase administrative burdens and costs for cable operators and the Cable Services Bureau. Under Post's proposal, cable operators must either petition for special relief or file a market modification petition to remove an out-of-market must-carry grandfathered under the Post-type provisions. The increased administrative burdens and costs will fall most heavily upon small cable operators.

**6. The Post Proposal Thwarts Must-Carry Policy.**

The must-carry rules are designed to provide in-market stations access to cable. By definition, out-of-market stations do not serve the local interest and are not sufficiently viewed to be included in the market. Allowing future must-carry rights because of past investment upends this policy. More and more, cable operators are faced with scarce channel capacity. The Post Proposal would have cable operators allocate scarce channel capacity to out-of-market


broadcast stations, distorting efficient allocation of resources. If an out-of-market station should be granted must-carry rights, it can bring the issue before the Commission in a market modification proceeding. Post has brought forward no evidence that supports the wholesale exception it advocates.

**C. Conclusion.**

The Post Proposal imposes untenable burdens on small cable. Small Cable should not be made to bear the burdens imposed by must-carry demands from both grandfathered stations under the Post Proposal and new DMA located stations. If a form of the Post Proposal is adopted by the Commission, it should exempt small cable from its reach.

Respectfully submitted:

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